

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.367 OF 2007**

Shri Kallappa Shankar Varpe & Ors. ..Appellants.
Vs.
Shri Bhavaku Rama Kokitkar & Ors. ..Respondents.
Mr.Vishwanath S. Talkute, adv. for the Appellants.

**CORAM : J.H.BHATIA, J.
DATE : SEPTEMBER 21, 2007.**

P.C.:

1. Heard Mr.Talkute the learned counsel for the appellants.

2. This is a Second Appeal filed by the original plaintiffs. It is the case of the plaintiffs/appellants that the suit property admeasuring three gunthas is an ancestral joint family property of the plaintiff and grandfather of the plaintiff no.1 Kalappa. According the plaintiffs, Narayan had no right to transfer these properties but the said Narayan allegedly entered into an agreement for sale of the suit land in favour of the defendant no.1. Defendant Nos.2 and 3 are son and daughter-in-law of the defendant no.1. Defendants began to make construction on the said land on the basis of agreement for sale. Initially, the Plaintiffs filed suit for perpetual injunction restraining the

defendants from causing any interference in their possession and later on, by making amendment in the plaint sought mandatory injunction to remove the construction, which was made upto plinth by that time. The suit came to be dismissed on the ground that the plaintiffs had already lost the possession but the suit was not filed for possession but for mandatory injunction. Plaintiffs preferred an appeal before the District Court, which was also dismissed on the same ground.

3. Admittedly, possession of the property is with the defendants and, therefore, the plaintiffs should have filed the suit for possession for and on behalf of the joint family. When the plaintiffs could claim relief of possession but did not make that claim, the suit for mere injunction is not tenable. The Courts below have rightly come to conclusion that the plaintiffs are not entitled to relief as sought by them. No substantial question of law is involved in the matter.

4. Appeal stands dismissed.

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[J.H.BHATIA, J.]